

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

CHRISTOPHER FAIN, *et al*, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

WILLIAM CROUCH, *et al.*,

Defendants.

CIVIL ACTION NO. 3:20-cv-00740
HON. ROBERT C. CHAMBERS

**CONSENT MOTION TO EXTEND TIME AND FILE COMBINED BRIEF FOR
RESPONSE TO MOTIONS TO DISMISS FILED BY DEFENDANTS CROUCH, BEANE,
AND WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

Plaintiffs Christopher Fain, Zachary Martell, and Brian McNemar (“Plaintiffs”), by and through their counsel, respectfully move the Court for an extension of time and to file a combined brief in response to the two motions to dismiss filed jointly by the following Defendants: Crouch, Beane, and West Virginia Department of Health and Human Resources (“WVDHHR”). The motions were filed three weeks apart. Accordingly, Plaintiffs now request an extension of their current deadlines so that they may oppose these motions at the same time, as well as respond to both motions in one collective response totaling not more than 40 pages in length on March 2, 2021. All Defendants consent to the relief sought in this motion.

In support, Plaintiffs state:

1. Plaintiffs filed their Complaint on November 12, 2020. (ECF No. 1.)
2. At Defendants’ request, Plaintiffs stipulated to approximately 30 additional days for each Defendant to answer or otherwise plead pursuant to Federal Rule of Civil Procedure 12.

The stipulation was filed by Defendants Crouch, Beane and WVDHHR on December 19, 2020. (ECF No. 19.)

3. Defendants Crouch, Beane, and WVDHHR, as a group, filed one motion to dismiss on January 11, 2021. (ECF No. 23.)

4. In light of the separate motions filed by the other Defendants in this case, Plaintiffs sought, and received, an extension to file their response to the first motion such that Plaintiffs' response to the first motion is currently due on February 15, 2021. (ECF Nos. 29, 30.)

5. Defendants Crouch, Beane, and WVDHHR, as a group, then filed their second motion to dismiss on February 2, 2021. (ECF No. 32.)

6. Pursuant to Local Rule of Civil Procedure 7.1(a)(7), Plaintiffs' response in opposition to the second motion is due "[w]ithin 14 days of the date of service of the motion," which Plaintiffs calculate to fall on February 16, 2021.

7. The two motions span 36 pages of briefing. (*See* ECF Nos. 25, 33.)

8. Both motions advance several arguments for dismissal of Plaintiffs' four counts. (*See id.*) The second motion to dismiss cites to three affidavits filed by Defendants Crouch, Beane, and WVDHHR in support of their position. (*See* ECF Nos. 32-1, 32-2, 32-3.)

9. Plaintiffs' counsel and counsel for Defendants Crouch, Beane, and WVDHHR have been in communication regarding the second motion to dismiss and the supporting affidavits. The parties require additional time to discuss the issues prior to the response deadlines.

10. Additionally, Plaintiffs believe it will serve party and judicial economy to respond to both motions in one collective memorandum, which will necessitate an extension of the 20-page limitation to properly brief the arguments advanced by Defendants Crouch, Beane, and WVDHHR over the course of 36 pages. Plaintiffs seek leave to file a combined brief of 40 pages in response

to the two motions to dismiss, consistent with the number of pages provided by the rules for a response to each. L.R. Civ. P. 7.1(a)(2) (allowing 20 pages for each brief).

11. Given the number of motions and the breadth of the arguments to which Plaintiffs will respond, Plaintiffs' counsel requires limited additional time to fully review and properly respond to the two motions filed by Defendants Crouch, Beane, and WVDHHR.

12. Accordingly, good cause exists to extend Plaintiffs' deadline and permit a combined brief to oppose both motions.

13. In light of all Defendants' consent to the relief requested, this extension will not prejudice any party. Nor will the extension significantly delay the administration of the case given the numerous pending motions to dismiss and the fact that Plaintiffs will respond to the other pending motions by the current deadline.

CONCLUSION

Accordingly, Plaintiffs respectfully request an extension of the deadlines and leave to file a combined brief to respond to both motions to dismiss filed by Defendants Crouch, Beane, and WVDHHR so that Plaintiffs' collective response in opposition to the motions is due on March 2, 2021, and shall total not more than 40 pages in length.

Dated: February 10, 2021

Respectfully submitted,

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